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IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

No. 748

INTERSTATE COMMERCE COMMISSION,
Petitioner,

v.

UNITED STATES OF AMERICA ON THE RELATION OF J. C. CAMPBELL, J. R. CAMPBELL, C. W. AMSLER AND HENRY AMSLER, TRADING AS THE BIRCH VALLEY LUMBER COMPANY, A PARTNERSHIP, *Respondents,*

BRIEF FOR RESPONDENTS IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

Statement of the Case.

The statement of the case in the petition (except as to certain details hereinafter referred to), and the opinion of the court below (R. 53-59) adequately present the facts involved in this case.

However it should be noted that the reasonableness of the rate attacked was not in issue before the Interstate

Commerce Commission (hereinafter referred to as the Commission). While the complaint filed with the Commission alleged that the rate was unreasonable, in violation of Section 1 of the Interstate Commerce Act, upon the hearing complainant's evidence was confined to the support of its allegations of undue prejudice to complainant and undue preference of complainant's competitors, in violation of Section 3 (1) of the Interstate Commerce Act and the resulting pecuniary loss to the complainant. This appears from the following extract from the Commission's report:

> "Complainant, however, does not question the reasonableness *per se* of the blanket or group rates from Allingdale or the other points in the group, but assails only what it terms the relatively high through rates from Tioga and Delphi. It also admits that the charge of the S. C. & M. is not unreasonably high." (R. 33)

The violation of Section 3 (1) of the Interstate Commerce Act in the exaction of unlawful charges by defendant carriers is established by the Commission's finding that the rates assailed "were, are, and for the future will be unduly prejudicial to complainant and unduly preferential of its competitors in the same general origin territory to the extent that they exceeded, exceed, or may exceed the rates contemporaneously maintained on like traffic from the group which includes Allingdale, W. Va." (R. 36)

The injury and the amount of the damage to the complainant, resulting from such violation of law, are established by the Commission's findings set out in its report, that (1) complainant was charged $15 per car for the transportation of its lumber from the mill to the junction point, in addition to the group rate from the junction

point, Allingdale, (R. 30); (2) the charge of $15 per car for the haul from the mill to the junction point was prepaid by the complainant, (R. 30); (3) complainant's selling prices of its lumber were quoted f. o. b. Allingdale, (R. 29); (4) complainant's lumber was sold in competition with that produced in the same general territory, (R. 30); and (5) complainant's competition was mainly with mills in the same general territory which were afforded the junction point (Allingdale) group rates, and complainant was forced to base its selling prices on the group (Allingdale) rates and *absorb* $15 per car. (R. 35-36).

Notwithstanding the above-described findings of unlawfulness of the charges of defendant carriers and resulting damage to the complainant, the Commission refused to enter an award of reparation, basing its refusal on the conclusion that, "The record will not support an award of reparation based on the undue prejudice found to exist." (R. 36)

The court below decided that "In this case appellant has shown, and the Commission has found, the violation of law complained of and likewise that appellant had sustained an injury and pecuniary loss by reason of the injury, to the extent of $15 for each car of lumber shipped within the statutory period," (R. 55-56) and said with reference to the refusal of the Commission to award reparation, "Hence it follows that the determination of the Commission that reparation should not be awarded is a mere conclusion contrary to its own findings of fact, and therefore contrary to the provisions of the Act." (R. 58)

Statutes Involved.

The rights of the respondents are determined by Sections 3 (1) and 8 of the Interstate Commerce Act (U. S. C. A., Title 49). Section 3 (1) prohibits any undue or unreasonable preference of, or any undue or unreasonable prejudice to, any shipper. Section 8 provides that every common carrier shall be liable for any violation of the act to the person or persons injured thereby for the full amount of damages sustained in consequence of such violation.

The remedies by which the respondents may secure those rights are determined by Sections 9, 13 (1), and 16 (1) of the Interstate Commerce Act (U. S. C. A., Title 49). Section 9 provides that any person damaged may elect to recover therefor either before the Commission or in the Federal Courts. Section 13 (1) provides for the prosecution before the Commission of any complaint made by a shipper against a carrier subject to the Act. Section 16 (1) directs the Commission to enter an order for an award of reparation upon the determination by the Commission that the shipper has been damaged as a result of the carrier's violation of the statute.

The text of the Sections above referred to is found in the Appendix to this brief.

Question Presented.

On page 2 of the petition for certiorari the question presented for the consideration of this Court is stated by petitioner in the following form:

> "Whether the writ of mandamus will lie to compel the Interstate Commerce Commission, in a proceeding in which it has taken jurisdiction and exer-

> cised the authority duly conferred upon it by statute, to make an award of reparation in favor of a complainant, where the Commission finds that such complainant has been subjected to the exaction of charges which are unduly prejudicial as to it, and concerning which charges the Commission further finds that 'the record will not support an award of reparation based on the undue prejudice found to exist'."

We submit that the above statement of the question presented is thoroughly inaccurate and misleading for the reason that it omits entirely the findings made by the Commission with respect to the damages resulting from the violation of law by defendant carriers.

Adopting the language of the petitioner so far as possible, we submit that the question presented for the determination of the Court is:

Whether the writ of mandamus will lie to compel the Interstate Commerce Commission, in a proceeding in which it has taken jurisdiction and exercised the authority duly conferred upon it by statute, to make an award of reparation in favor of a complainant, where the Commission finds that such complainant has been subjected to the exaction of unlawful charges which were unduly prejudicial as to it, and concerning which charges the Commission further finds (1) *that the rate exacted was unlawful to the extent of $15 per car during the past statutory period;* (2) *that the complainant was in competition with other mills in the same general territory;* (3) *that the competing mills enjoyed a rate $15 per car less than the complainant;* (4) *that complainant prepaid the unlawful charge of $15 per car to the junction point, and quoted its prices f. o. b. the junction point;* and (5) *that complainant was forced to base its prices on the group rate accorded its competitors and absorb the $15*

unlawful charge; but nevertheless refuses to award reparation, and bases its refusal on the conclusion that "the record will not support an award of reparation based on the undue prejudice found to exist."

Summary of Argument.

The argument in the brief of the petitioner is devoted to two propositions, namely, (1) that this case involves a question of general importance, and (2) that the decision of the Court of Appeals is in conflict with prior decisions of that Court and inconsistent with decisions of this Court.

It may be conceded that the protection of shippers' rights from violations of the Interstate Commerce Act by the carriers is a matter of great importance to the public. While it is true that the question of railway regulation and protection of shippers generally is of great importance, it must be borne in mind that in the case at bar the Commission's administrative determination in fixing the standard of rates, both for the past and for the future, is not questioned, as the carriers obeyed the order of the Commission by reducing the rates $15 per car for the future. The sole controversy concerns the award of reparation to the particular shipper complainant for the damages suffered by it as a result of the carriers' exaction of charges which, by the unquestioned administrative standard prescribed by the Commission, were unlawful. The controversy is therefore resolved into one between private litigants over past transactions, with which the public has no concern.

By repeated pronouncements of this court it is well established that the writ of mandamus will not issue to compel the exercise of discretion in a particular manner or to reach a given result. But that principle is not involved in the case at bar for the reason that the Com-

mission has completely exercised its discretion, or quasi judicial function, in making the findings of damage which entitle complainant (respondents) to an award of reparation.

In the light of the facts in this case the questions for consideration are, (1) whether the Commission's conclusion that it will not award reparation overcomes and negatives its direct and positive findings of damage resulting from the carriers' unlawful acts, and, (2) whether the writ of mandamus is a remedy proper to secure the performance by the Commission of its statutory duty to enter an award of reparation when, after a full hearing, it finds the shipper has been damaged in a specified amount by the carriers' violation of law.

ARGUMENT.

I.

The Findings of Fact Made by the Commission Determined Complainant's Right to Recover, and that Right of Recovery was neither Destroyed nor Affected by any Conclusion Contrary Thereto.

It is well established that to recover damages the shipper must show that the violation of law by the carrier has resulted in an injury to the shipper, and that the measure of damage for such injury is the pecuniary loss sustained by the shipper. *Parsons* v. *Chi. & N. W. Ry. Co.*, 167 U. S. 447; *Pennsylvania R. R. Co.* v. *International Coal Min. Co.*, 230 U. S. 184; *Mills* v. *Lehigh Valley R. R. Co.*, 238 U. S. 473. Both petitioner and respondents are in harmony on this proposition, and were it not for the fact that a considerable portion of petition-

er's brief is devoted to argument based upon a mistaken conception of the theory of the Court of Appeals no discussion of this point would be necessary.

On pages 8 and 9 of petitioner's brief it is stated that,

> "The theory of the Court of Appeals appears to be that, after the Commission had found that the Lumber Company had been unduly prejudiced by the payment of charges from Tioga higher than were collected on like traffic from the Allingdale group, the complainant was entitled as a matter of law and regardless of whether it had been damaged in the premises, to an award of reparation measured by the amount that the Tioga rates exceeded the contemporaneously applicable Allingdale group rates."

Several pages of petitioner's brief are devoted to showing the error of the supposed theory by a lengthy discussion of the *International Coal Case,* supra.

Examination of the opinion of the Court of Appeals shows that it is not susceptible of the petitioner's interpretation that in the absence of proof of injury and the resulting pecuniary loss a shipper is entitled "as a matter of law, and regardless of whether it had been damaged in the premises" to an award of damages in the amount by which the unlawful rate exceeds that found to be lawful. On the contrary the opinion of the Court of Appeals states that the Commission found "that appellant had sustained an injury and pecuniary loss by reason of the injury to the extent of $15 for each car of lumber shipped within the statutory period." (R. 55-56)

The *International Coal Case,* supra, involved an attempt of a shipper to recover damages from the carrier for certain rebates given the shipper's competitors. This Court held that the amount of the rebates given a com-

petitor was not necessarily an adequate measure of damages to the shipper. However that case did lay down certain principles respecting recoverable damages which are directly applicable to the instant case. This Court therein said:

> "The measure of damages was the pecuniary loss inflicted on the plaintiff as the result of the rebate paid. Those damages might be the same as the rebate, or less than the rebate, or many times greater than the rebate; but unless they were proved, they could not be recovered. Whatever they were, they could be recovered, because Sec. 8 expressly declares that wherever the carrier did an act prohibited, or failed to do any act required, it should be *'liable to the person . . . injured thereby for the full amount of damages sustained in consequence of any such violation . . . together with a reasonable . . . attorneys' fee'.*" (P. 203)

> "The statute gives a right of action for *damages* to the *injured* party, and by the use of these legal terms clearly indicated that the damages recoverable were those known to the law and intended as compensation for the injury sustained. It is elementary that in a suit at law both the fact and the amount of the damage must be proved." (P. 204)

> ". . . the statute made the guilty carrier liable for the full amount of damages sustained,—whatever they might be, and whether greater or less than the rate of rebate paid." (P. 206)

The violation of law by defendant carriers being established by the Commission's administrative determination, to determine the complainant's right to damages it is necessary only to examine the Commission's report to ascertain whether the Commission found that complainant had suffered a pecuniary loss as a result of defendant carriers' wrong. The findings of fact by the

Commission, however made, and wherever appearing in the report, must govern. *Meeker v. Lehigh Valley R. R. Co.*, 236 U. S. 412.

The Commission's report (R. 28-37) shows that the complainant was engaged in the lumber business at Tioga, W. Va., 7.1 miles from Allingdale, W. Va.; that it shipped its products to all parts of the U. S.; that complainant was forced to pay a charge of $15 per car for the transportation of its lumber to Allingdale; that in the same region or territory were many other lumber firms, competitors in the same business, producing similar products, and likewise shipping to competitive markets in all parts of the United States, and enjoying the Allingdale group rate. There was no difference of kind or quality between the products of the complainant and the products of its competitors. Since the markets were identical the marketing conditions for complainant and its competitors were the same.

The only difference between conditions under which complainant and its competitors did business, was that the complainant was required to pay a freight rate of $15 per car more than its competitors were required to pay.

The Commission's findings of fact are so positive and direct as to require no analysis or argument to demonstrate that they established the fact of injury and the amount of the damage. Every element of damage is set forth in the findings.

The fact of injury and the amount of resultant damage by reason of the unlawful charge of $15 per car for the haul over the rails of the S. C. & M. Ry. to the junction point, Allingdale, W. Va., are shown by the findings:

"On shipments of lumber the S. C. & M. charges $15 per car for its service to the junction point, which is in addition to the rate from the junction point." (R. 30) and

"Complainant's prices are all quoted f. o. b. Allingdale, W. Va." (R. 29) and

"The lumber is sold in competition with that produced throughout the country and especially that produced in the same general territory." (R. 30) and

"In the present case complainant's competition is mainly with mills in the same general territory, which includes the other groups where the junction-point or group rates apply from points on certain short line connections of the B. & O. As in the case cited, mills on the other short lines are not shown to fix the prices at which complainant sells its lumber, but there appears to be no question that complainant, and intervenor, are forced to base their prices on the group rates, and absorb the charges of the S. C. & M." (R. 35-36)

It may be noted further that the finding last quoted prevents any confusion as to the identity of the person injured by the unlawful act of the carriers, since it determines that the complainant was forced to and did absorb the unlawful charge.

That the complainant's profits would have been greater, or its losses less, in the amount of $15 per car, had the existing discrimination been removed, is established beyond argument by the Commission's findings of fact. That the complainant is damaged to the extent of $15 per car when it is forced to pay a freight rate $15 per car greater in amount than its competitors are forced to pay, is forced to base its prices on the freight rates accorded its competitors, and is forced to absorb the ex-

cessive charge of $15 per car, is so elementary as to require no demonstration.

It is suggested on page 16 of petitioner's brief that,

> "For aught that appears, respondent's operating and labor costs, as well as other costs incurred by it in producing its lumber, may be such that even with the additional $15 charge it had to pay the S. C. & M., it could still do business on even terms with its competitors."

We can suggest no more complete answer to this contention than that made by the Court of Appeals in its opinion, (R. 58);

> ". . . the only suggestion of justification for the Commission's refusal to make the award, and this was made in the argument, is that appellant in producing its lumber may have an advantage of operating and labor cost which its competitors do not have. We do not think this fact, even if it be true, would reduce appellant's recoverable damages under the statute. In such circumstances, in view of the finding of equality of price with its competitors, its profits would have been greater to the extent of its lower cost of production; but when, on the other hand, as appears from the findings of fact, it was required to reduce its profits $15 per car by the prejudicial rate it was forced to pay, the latter figure in the circumstances necessarily represents its damages, since obviously otherwise its profits would have been that much more."

The brief of the petitioner disregards the Commission's findings of fact and relies upon its conclusion that "the record will not support an award of reparation" to defeat respondents right to damages. But the findings of fact made by the Commission with respect to the dam-

age sustained by the shipper as the result of the defendant carriers' unlawful acts determine the right of the shipper to damages. And where there is a contradiction between the findings of fact made and the conclusion purporting to be based thereon the findings of fact must govern.

In *Interstate Commerce Commission v. L. & N. R. R. Co.*, 227 U. S. 88, at page 91 it was said:

> "But the statute gave the right to a full hearing, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the facts proved. * * *
>
> "In the comparatively few cases in which such questions have arisen it has been distinctly recognized that administrative orders, quasi judicial in character, are void if a hearing was denied; if that granted was inadequate or manifestly unfair; if the finding was contrary to the 'indisputable character of the evidence' * * * or if the facts found do not, as a matter of law, support the order made (U. S. v. Baltimore & O. S. W. R. Co., 226 U. S. 14, ante 104, 33 Sup. Ct. Rep. 5, Cf. Atlantic Coast Line R. Co. v. North Carolina Corp. Commission, 206 U. S. 20, 51 L. ed. 942, 27 Sup. Ct. Rep. 585; Wisconsin, M. & P. R. Co. v. Jacobson, 179 U. S. 301, 45 L. ed. 201, 21 Sup. Ct. Rep. 115; Washington Ex. Rel. *Oregon R. (92) & Nav. Co. v. Fairchild, 224 U. S. 510, 56 L. ed. 863, 32 Sup. Ct. Rep. 535; Interstate Commerce Commission v. Illinois C. R. Co., 215 U. S. 470, 54 L. ed. 287, 30 Sup. Ct. Rep. 155; Southern P. Co. v. Interstate Commerce Commission, 219 U. S. 433, 55 L. ed. 283, 31 Sup. Ct. Rep. 288; Muser v. Magone, 155 U. S. 247, 39 L. ed. 137, 15 Sup. Ct. Rep. 77.)"

As pointed out by the Court of Appeals (R. 58),

> ". . . the determination of the Commission that reparation should not be awarded is a mere conclusion contrary to its own findings of fact and therefore contrary to the provisions of the act. In such a case the granting of the writ is not the control of a particular discretion or a substitution of the judgment of this court for that of the Commission, but a lawful order to the Commission to carry into effect the plain result of the exercise by it of its discretion—a situation in all respects analogous to an order to an inferior court to sign a judgment which it rendered but refused to sign."

When a shipper elects to prosecute his claim for damages before the Commission the Commission is required to exercise a quasi-judicial function and to determine the cause not only in accordance with the evidence submitted but in accordance with the law of damages. The duty of the Commission in this respect is well defined by the following language of this Court in *Louisville & N. R. Co. v. Ohio Valley Tie Co.*, 242 U. S. 288, 290, 61 L. ed. 305:

> "By Section 8 a common carrier violating the commands of the act is made liable to the person injured thereby 'for the full amount of the damages sustained in consequence' of the violation. (24 Stat. at L. 382, Chap. 104, Comp. Stat. 1913, Section 8572.) By Section 9 any person so injured may make complaint to the Commission or may sue in a Court of the United States to recover the damages for which the carrier is liable under the act, but must elect in each case which of the two methods of procedure he will adopt. The rule of damages in one hardly can be different from that proper for the other. An award directing the carrier to pay to the

complainant the sum to which he is entitled is provided for by Section 16 * *. The decisions say that whatever the damages were, they could be recovered * * *."

It is clear that the findings of fact made by the Commission established damages to the complainant in a specified amount resulting directly and solely from the unlawful acts of the defendant carriers. Under the rules laid down by this Court in *Pennsylvania R. R. Co. v. International Coal Min. Co.*, supra, there can be no question that the Commission found every element of damage essential to a recovery. In the light of the findings made by the Commission its conclusion that the record would not support an award of reparation is nugatory.

II.

The Denial of Reparation by the Commission was Inconsistent with its Findings of Fact and Mandamus is a Remedy Proper to Obtain the Performance by the Commission of its Statutory Duty to Enter an Award of Reparation Consistent with its Findings.

One of the reasons relied upon by the petitioner for the granting of a writ of certiorari by this Court is that "the decision of the Court of Appeals of the District of Columbia is in conflict with prior decisions of that Court."

While the decision is in no way in conflict with prior decisions of that Court, we submit that in any event a decision in conflict with or overruling an earlier decision of the same Court is not one of the "special and important reasons" for the grant of the writ by this Court.

While the opinion of the Court of Appeals clearly dis-

tinguishes the case at bar from the case of *Donner Steel Co. v. Interstate Commerce Commission,* 285 Fed. 955, it may be pointed out that in that case, while the Commission found that there had been a violation of Section 3, it expressly found that the shipper had not proved its damages resulting from the violation of law. With respect thereto the Commission said in its report of that case, (*Donner Steel Co. v. D. L. & W. R. R. Co.,* 57 I. C. C. 745):

> "We are of opinion and find that the complainant has not shown that its profits would have been any greater had the existing discrimination and prejudice been removed, or that it has suffered any damage of which such discrimination and prejudice are the proximate cause." (P. 752)

Thereafter the complainant, Donner Steel Co., sought a writ of mandamus from the Supreme Court of the District of Columbia to compel the Commission to set aside its order and award damages upon the evidence introduced at the hearing before the Commission. Issuance of the writ was denied and the action of the lower Court was affirmed by the Court of Appeals of the District of Columbia, on the ground that the finding of the Commission that the appellant had not been damaged could not be disturbed. *Donner Steel Co. v. I. C. C.,* 285 Fed. 955.

Thereafter the Commission granted a petition of the Steel Company for a rehearing and a further hearing on the question of damage was held. Upon the rehearing, (*Donner Steel Co. v. D. L. & W. R. R. Co.,* 92 I. C. C. 595) the Commission affirmed its previous finding, saying at page 600:

> "Upon further consideration we affirm our original finding that complainant has not established the

fact that it has been damaged because of the undue prejudice the existence of which was found in our original report. Reparation is therefore denied."

It is obvious that the decision of the Court of Appeals in the *Donner Steel Case,* supra, is not in conflict with its decision in this case for the reason that it was there sought to compel the Commission by way of mandamus to do what the Commission already has done in its exercise of discretion in this case, namely, to find as a fact that the shipper was damaged by the unlawful acts of the carriers. We are in thorough accord with the statement on page 12 of the petitioner's brief that the question of damage presented to the Commission for determination is one of fact. It must follow that the findings of fact made by the Commission could not be altered through the agency of the writ of mandamus, as was sought in the *Donner Steel Case.*

The petitioner contends that the decision in the instant case is also in conflict with the decisions of the Court of Appeals in *Bartlesville Zinc Co. v. I. C. C.*, 30 F.(2d) 479, and *Interstate Commerce Commission v. U. S. ex rel. Capital Grain & Feed Co.*, 35 F.(2d) 1012. It is deemed sufficient to point out that in the former case the Court denied a writ of mandamus to the Commission which would have directed a particular exercise of judgment or discretion. The Commission had found, in the exercise of its discretion, (*Bartlesville Zinc Co. v. Director General,* 74 I. C. C. 26, 30) that:

"In our opinion the demurrage charges were assessed in substantial compliance with the provisions of the applicable tariffs.

"We therefore find that the demurrage charges attacked were legally applicable and were not unlawful."

In the *Capital Grain & Feed Co. Case,* supra, it was sought to control and direct the exercise of discretion and judgment of the Commission by requiring it to make a finding that the rates assailed had been unreasonable or unduly prejudicial in the past. Such an attempt to interfere with the purely administrative function of the Commission must necessarily fail.

Interstate Commerce Commission v. Waste Merchants Asso., 260 U. S. 32, cited and quoted at length on pages 12 and 13 of petitioner's brief can have no application to this case because mandamus was denied for the sole reason that its issue would have compelled a particular exercise of discretion in setting aside the Commission's finding that the rates were not unlawful. Mr. Justice Brandeis stated at page 36:

> "It (the Commission) heard the case fully. It found that the rates charged were not unreasonable or discriminatory, in violation of the Commerce Act, nor unreasonable for the service actually performed, in violation of the Federal Control Act."

It is apparent that none of the decisions of this Court, or of the Court of Appeals of the District of Columbia cited by the petitioner, are in conflict with the decision of the Court of Appeals in the case at bar, for the reason that all the cases cited attempt, either to set aside administrative standards prescribed by the Commission, or to compel the Commission to make particular findings of fact in its quasi-judicial capacity. Far from seeking to set aside administrative standards prescribed by the Commission, or the findings of the Commission made in its quasi-judicial capacity, the respondents right to recover is grounded upon the administrative standard *and* findings as made by the Commission.

Conclusion.

The facts established by the Commission's findings, set out in its report, are:

1. That the rates exacted of complainant and accorded to its competitors, were unduly prejudicial to complainant and unduly preferential of its competitors to the extent of $15 per car, and therefore unlawful as violative of Section 3 (1) of the Interstate Commerce Act.

2. That by reason of the unlawful rates complainant was compelled to quote its prices f. o. b. Allingdale and was required to pay, and did prepay, a charge of $15 per car for the transportation of its lumber from its mills to Allingdale.

3. That the lumber was sold in competition with other lumber produced in the same general territory and enjoying the unduly preferential interstate through rates $15 per car less than complainant's lumber, and

4. That complainant was forced to base its selling price on the group rates accorded its competitors and absorb the unlawful charges of $15 per car to the junction point, Allingdale, W. Va.

Upon the fact of these findings of damage and the amount of the pecuniary loss per car, the Commission had no choice in awarding reparation, but had the positive and mandatory duty imposed by the mandatory provision of Section 16 of the Interstate Commerce Act to enter an order awarding reparation. Its conclusion that "the record will not support an award of reparation" is clearly in conflict with its findings of fact, is arbitrary, and without legal effect.

The order denying reparation being a negative order, mandamus is the only remedy available to the injured shipper. Mandamus will lie to compel the Commission to do that which it was obliged to do upon its own findings of damage, namely: to enter an order of reparation in favor of respondents.

The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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March 3, 1933.

APPENDIX

Applicable Sections of the Interstate Commerce Act

Section 3 (1). That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

U. S. C. A., Title 49.

Section 8. That in case any common carrier subject to the provisions of this Act shall do, cause to be done, or permit to be done any act, matter, or thing in this Act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this Act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this Act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

U. S. C. A., Title 49.

Section 9. That any person or persons claiming to be damaged by any common carrier subject to the provisions of this Act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this Act, or any district or circuit court of the United States of competent jurisdiction; but such person or persons shall not have the right to

pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. * * *.

U. S. C. A., Title 49.

Section 13 (1). That any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act, in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

U. S. C. A., Title 49.

Section 16 (1). That if, after hearing on a complaint made as provided in section thirteen of this Act, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this Act for a violation thereof, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

U. S. C. A., Title 49.